

## § 222.41

## 34 CFR Ch. II (7–1–16 Edition)

children with disabilities, and the SEA, in consultation with the LEA, identifies “proportion of children with disabilities” as an additional comparability factor. From the group of LEAs under § 222.39(a)(2) that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of children with disabilities enrolled in each of the LEAs. The SEA divides the list of LEAs into four groups containing equal numbers of LEAs. The group containing the eligible applicant LEA is that LEA’s new group of generally comparable LEAs if it contains at least 10 LEAs.

(iii) The SEA may apply more than one factor of general comparability in identifying a new group of 10 or more generally comparable LEAs for the eligible applicant LEA. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA’s new group of generally comparable LEAs. The SEA computes the LCR for the eligible applicant LEA using the data from all of the LEAs in the subgroup except the eligible applicant LEA.

*Example 3.* An eligible applicant LEA is very sparsely populated and serves an unusually high percentage of children with limited English proficiency. The SEA, in consultation with the LEA, identifies “sparsity of population” and “proportion of children with limited English proficiency” as additional comparability factors. From the group of LEAs under § 222.39(a)(2) that includes the eligible applicant LEA, the SEA identifies all LEAs that are sparsely populated. The SEA further subdivides the sparsely populated LEAs into two groups, those that serve an unusually high percentage of children with limited English proficiency and those that do not. The subgroup of at least 10 sparsely populated LEAs that serve a high percentage of children with limited English proficiency is the eligible applicant LEA’s new group of generally comparable LEAs.

(e)(1) Using the new group of generally comparable LEAs selected under paragraph (d) of this section, the SEA computes the LCR for the eligible ap-

plicant LEA according to the provisions of § 222.41.

(2) The SEA certifies the resulting LCR by submitting that LCR to the Secretary and providing the Secretary a description of the additional factor or factors of general comparability and the data used to identify the new group of generally comparable LEAs.

(3) The Secretary reviews the data submitted by the SEA, and accepts the LCR for the purpose of use under section 8003(b)(1)(C)(iii) in determining the LEA’s maximum payment under section 8003 if the Secretary determines that it meets the purposes and requirements of the Act and this part.

(Authority: 20 U.S.C. 7703(b)(1)(C)(iii))

[80 FR 33164, June 11, 2015]

### **§ 222.41 How does a State educational agency compute and certify local contribution rates based upon generally comparable local educational agencies?**

Except as otherwise specified in the Act, the SEA, subject to the Secretary’s review and approval, computes and certifies an LCR for each group of generally comparable LEAs within its State that was identified using the factors in § 222.39, and § 222.40 if appropriate, as follows:

(a)(1) The SEA shall compile the aggregate local current expenditures of the comparable LEAs in each group for the third fiscal year preceding the fiscal year for which the LCR is being computed.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the generally comparable LEAs from revenues derived from local sources. No State or Federal funds may be included.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs in each group provided a free public education during the third fiscal year preceding the fiscal year for which the LCR is being computed.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section by;

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) The SEA certifies the resulting figure for each group as the LCR for that group of generally comparable LEAs to be used by the Secretary under section 8003(b)(1)(C)(iii) in determining the LEA's maximum payment amount under section 8003.

(Authority: 20 U.S.C. 7703(b)(1)(C)(iii))

[60 FR 50778, Sept. 29, 1995, as amended at 80 FR 33165, June 11, 2015]

#### § 222.42 [Reserved]

#### § 222.43 What requirements must a local educational agency meet in order to be eligible for financial assistance under section 8003(b)(1)(F) due to unusual geographic features?

An LEA is eligible for financial assistance under section 8003(b)(1)(F) if the Secretary determines that the LEA meets all of the following requirements—

(a)(1) The LEA is eligible for a basic support payment under section 8003(b), including meeting the maintenance of effort requirements in section 8003(g) of the Act;

(2) The LEA timely applies for assistance under section 8003(b)(1)(F) and meets all other requirements of subparts A and C;

(3) The LEA is meeting the tax rate requirement in § 222.68(c) and the other applicable requirements of §§ 222.68 through 222.72; and

(4) The LEA is not in a State that takes the LEA's payment under section 8003(b)(1)(F) into account in an equalization program that qualifies under section 8009 of the Act.

(b)(1) As part of its section 8003 application, the LEA indicates in writing that it wishes to apply for an "unusual geographic" payment and it will provide the Secretary with documentation upon request that demonstrates that the LEA is unable to provide a level of education equivalent to that provided by its generally comparable LEAs because—

(i) The applicant's current expenditures are affected by unusual geographic factors; and

(ii) As a result, those current expenditures are not reasonably comparable to the current expenditures of its generally comparable LEAs.

(2) The LEA's documentation must include—

(i) A specific description of the unusual geographic factors on which the applicant is basing its request for compensation under this section and objective data demonstrating that the applicant is more severely affected by the factors than any other LEA in its State;

(ii) Objective data demonstrating the specific ways in which the unusual geographic factors affect the applicant's current expenditures so that they are not reasonably comparable to the current expenditures of its generally comparable LEAs;

(iii) Objective data demonstrating the specific ways in which the unusual geographic factors prevent the applicant from providing a level of education equivalent to that provided by its generally comparable LEAs; and

(iv) Any other information that the Secretary may require to make an eligibility determination under this section.

(Authority: 20 U.S.C. 7703(b)(1)(F))

[80 FR 33165, June 11, 2015]

#### § 222.44 How does the Secretary determine a maximum payment for local educational agencies that are eligible for financial assistance under section 8003(b)(1)(F) and § 222.43?

The Secretary determines a maximum payment under section 8003(b)(1)(F) for an eligible LEA, using data from the third preceding fiscal year, as follows:

(a) Subject to paragraph (b) of this section, the Secretary increases the eligible LEA's local contribution rate (LCR) for section 8003(b) payment purposes to the amount the Secretary determines will compensate the applicant for the increase in its current expenditures necessitated by the unusual geographic factors identified under § 222.43(b)(2).

(b) The Secretary does not increase the LCR under this section to an amount that is more than—

(1) Is necessary to allow the applicant to provide a level of education